IN THE UTAH COURT OF APPEALS

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Advanced Comfort Technology, Plaintiff and Appellee, v. EdiZONE, LC; Sunshine Manufacturing, LC; Mycomfort, LLC; and John Does 1-5, Defendants and Appellants.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090037-CA F I L E D (March 26, 2009) 2009 UT App 83

Third District, Salt Lake Department, 060910483
The Honorable Randall N. Skanchy

Attorneys: Casey K. McGarvey, North Salt Lake; and E. Scott Savage and Kyle C. Thompson, Salt Lake City, for Appellants
Mark M. Bettilyon, Robert O. Rice, Michael D. Mayfield, and Caleb J. Frischknecht, Salt Lake City, for Appellee

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Before Judges Greenwood, Orme, and Davis.

PER CURIAM:

EdiZONE, LC; Sunshine Manufacturing, LC; and Mycomfort, LLC (collectively, EdiZONE) seek to appeal the trial court's orders awarding a money judgment and an injunction in favor of Advanced Comfort Technology (ACT). This is before the court on its own motion for summary disposition based on lack of jurisdiction due to the absence of a final order.

On December 11, 2008, the trial court entered its findings of fact, conclusions of law, and order supporting a judgment and an injunction entered the same day. EdiZONE filed a notice of appeal from the December 11 orders on January 9, 2009. Also on January 9, the trial court entered orders withdrawing the December 11 orders and entering a partial judgment and a preliminary injunction. Based on both the December 11 orders and the January 9 orders, it is clear that attorney fees and the scope of the injunction remain pending in the trial court.

An appeal is improper if it is taken from an order or judgment that is not final, unless it fits within an exception to

the final judgment rule. See Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. To be final, an order or judgment must dispose of all parties and claims to an action, including attorney fees. See id. ¶ 10. "In other words, a judgment is final when it 'ends the controversy between the parties litigant.'" Id. ¶ 9.

Here, there is no final judgment and no exception applies. The December orders were interlocutory orders because the trial court reserved attorney fees and because the final scope of the injunction remained at issue.[1] Accordingly, this appeal is not properly taken and this court must dismiss it. See id. ¶ 8.

EdiZONE urges this court to consider the orders as final pursuant to the pragmatic test in First of Denver Mortgage Investors v. C.N. Zundel & Assocs., 600 P.2d 521 (Utah 1979). In Denver Mortgage, the court noted that no further judicial action was required regarding the issue appealed and that the only claims remaining were unrelated. See id. at 528. Here, the remaining issues are not unrelated. Since Denver Mortgage, the Utah Supreme Court has held that attorney fees must be determined before a judgment is final. See ProMax Dev. Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254. Additionally, the scope of the injunction remains pending, and so the outstanding claim is directly related to the injunction as issued. Accordingly, Denver Mortgage is not applicable to the circumstances here.

This appeal is dismissed without prejudice to the filing of a timely notice of appeal from a final order.

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Pamela T. Greenwood,
Presiding Judge

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Gregory K. Orme, Judge

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James Z. Davis, Judge

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[1]The trial court's January 9, 2009 orders clarify that the trial court considered the December orders to be interlocutory. EdiZONE asserts that the trial court lacked jurisdiction to enter the January 9 orders. However, it appears that the January orders, which corrected the captions of the December orders, are within the scope of rule 60(a) of the Utah Rules of Civil Procedure, which permits a trial court to correct clerical errors. See Utah R. Civ. P. 60(a). Regardless, the December orders on their own establish that they were not final orders.